



United States Department of Education

Office of the Secretary

FOIA Service Center

December 19, 2023

Stacy Skankey
Staff Attorney
Goldwater Institute
500 E Coronado Rd
Phoenix, AZ 85004

RE: FOIA Request No. 24-00550-F

Dear Stacy Skankey:

This letter is in response to your letter, dated December 14, 2023, and received in the U.S. Department of Education's (Department) FOIA Service Center on December 15, 2023. Your letter was sent in response to the Department's December 13, 2023, fee estimate of \$2,099.34 to process your FOIA request, submitted December 4, 2023.

In your December 14, 2023, letter you state that a fee waiver was requested at the time of your request. However, neither your December 4, 2023, letter nor the accompanying FOIA Request form as submitted included a fee waiver request. In fact, your FOIA submission authorized payment up to \$300 without further authorization. Because the Department's fee estimate exceeded that amount, we sent you the December 13, 2023, communication requesting authorization for the higher amount.

If you now wish to submit a fee waiver request, additional information is needed. In your FOIA request and subsequent correspondence, you state that "the Goldwater Institute is a not-for-profit 501(c)(3) organization" and that as such, "no responsive records will be used for commercial purposes". However, the Office of Management and Budget FOIA fee guidelines make clear that designation into a particular fee category turns on the use to which the requested information will be put, not the identity of the individual requestor. As part of any fee waiver request, please include information about your intended use of any responsive records.¹

Please also note that to determine whether a FOIA request is eligible for waiver or reduction of fees pursuant to paragraph (a)(1), see 34 C.F.R. § 5.33(b), the Department considers the following factors:

(1) Whether the subject of the request specifically concerns identifiable operations or activities of the government.

¹ See *OMB Fee Guidelines*, 52 Fed. Reg. 10,013 (Mar. 27, 1987) ("It is ... possible that a non-profit organization could make a request that is for commercial use".)

(2) Whether the disclosable portions of the requested information will be meaningfully informative in relation to the subject matter of the request.

(3) The disclosure's contribution to public understanding of government operations, i.e., the understanding of the public at large, as opposed to an individual or a narrow segment of interested persons (including whether the requester has expertise in the subject area of the FOIA request as well as the intention and demonstrated ability to disseminate the information to the public).

(4) The significance of the disclosure's contribution to public understanding of government operations or activities, i.e., the public's understanding of the subject matter existing prior to the disclosure must be likely to be enhanced significantly by the disclosure.

As noted in our December 13, 2023, communication, as written your request located approximately 7,000 records of responsive documents, and the fee estimate has been calculated to be \$2,099.34. This is an estimate, and the final cost may exceed this amount. You have the option to narrow the scope of your request. This narrowing could result in fewer responsive documents, thereby lowering estimated fees and reducing the time needed to fulfill your request. Currently, Item 1 of your request seeks email communication among the seven identified individuals; however, we note that three of the individuals are from outside the Department. An option to narrow would be only emails between any of the external individuals and any of the internal individuals. Another option would be to narrow the date range, in lieu of starting at 2021 for Item 1 and 2020 for Item 2.

Please advise if you are willing to pay this amount, \$ 2,099.34, if you are willing to narrow the scope of your request, or if you are now seeking a fee waiver. Additionally, be advised that until such time that the Department receives notification of your willingness to pay the processing costs associated with your FOIA Request, all search and review of responsive documents will cease. If we have not received a response within 10 calendar days of the date of our December 13, 2023, fee estimate, FOIA Request No. 24-00550-F will be administratively closed.

Sincerely,

Sandra Lewandowski
Government Information Specialist
Office of the Secretary